Supreme Court of the United States

OCTOBER TERM, 1957

No. 382

THE FIRST UNITARIAN CHURCH OF LOS ANGELES, a Corporation,
Petitioner,

vs.

COUNTY OF LOS ANGELES, CITY OF LOS ANGELES, H. L. BYRAM, COUNTY OF LOS ANGELES TAX COLLECTOR, *et al.*,
Respondents.

No. 385

VALLEY UNITARIAN-UNIVERSALIST CHURCH, INC.,
Petitioner,

vs.

COUNTY OF LOS ANGELES, CALIFORNIA; CITY OF LOS ANGELES, CALIFORNIA; H. L. BYRAM, County Tax Collector, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

MOTION FOR LEAVE TO FILE BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*, AND BRIEF, *AMICUS CURIAE*

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Of Counsel.

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

Constitutions

Texts and Other Treatises

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MOTION OF AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

The American Civil Liberties Union, hereinafter called the "Union", respectfully moves for leave to file a brief *amicus curiae* in these cases. The attorneys for petitioners

consented to the filing, but the attorneys for respondents have refused consent.

The Union is a long-established, nationwide, nonpartisan organization devoted to the protection and preservation of the fundamental freedoms guaranteed to citizens of this country by federal and state constitutions. It believes that no human freedoms are more vital than those assured in the First and Fourteenth Amendments of the United States Constitution. More particularly, it believes in the freedoms of speech and religion and the principle of separation of church and state.

The Union is interested in the instant cases because of its concern and belief that the laws of California relating to tax exemptions, particularly as applied herein against the petitioners by the California taxing authorities and courts, constitute a violation of the freedoms of speech and religion and of the principle of separation of church and state.

The *amicus curiae* briefs of the Union have been accepted by this Court in all of the recent cases involving the principle of separation of church and state (*Cf., Everson, McCollum, Doremus* and *Zorach* cases).

Although various aspects of these issues have been raised by petitioners in the State courts and in the petitions for writ of certiorari, there seems to be a strong likelihood that certain aspects thereof will not be discussed or given adequate emphasis.

In its annexed brief the Union believes that it has discussed certain aspects of the constitutional issues involved which either have not been mentioned or have not been fully treated by the parties and that this discussion will be helpful to this Court.

The Union respectfully moves that it be granted leave to file the accompanying brief.

Respectfully submitted,

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ROWLAND WATTS,
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Interest of American Civil Liberties Union

The interest of American Civil Liberties Union in these cases has been stated in the annexed motion.

Statement of Case

The facts alleged in the complaints of petitioners (plaintiffs below) are deemed true (R. pp. 1-32)*. The Supreme Court of California, in a 4 to 3 decision (R. pp. 35-89) has in each case, rendered judgment for defendants (respondents here) following an order sustaining a general demurrer to the complaint without leave to amend (R. p. 35).

Petitioners are Unitarian-Universalist churches in the City and County of Los Angeles. They are non-profit religious corporations duly organized under the laws of California. Their respective properties, admittedly, are devoted exclusively to religious purposes (R. pp. 1, 2).

Section 1½ of Article XIII of the California Constitution provides taxation exemption for all buildings and real property "when the same are used solely and exclusively for religious worship".

Petitioners have been denied such tax exemption solely because in executing and filing claims for such tax exemption they have declined to execute, and have stricken from the body of the required claim-forms, the declaration or oath prescribed by Section 32 of the Revenue and Taxation Code, (enacted statutes of 1953, Chapter 1503, Section 1, page 3114) reading as follows (R. pp. 8, 37):

> "That applicant does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign Government against the United States in the event of hostilities."

The requirement of this oath is based on, and is said to be in implementation of, Article XX, Section 19 of the

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* References are to page numbers of Transcript of Record in Case No. 382.

California Constitution, adopted Nov. 4, 1952, which provides:

> "Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:
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> • • •
>
> (b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State."

Petitioners duly executed and filed, on forms furnished by the county tax assessor, claims of exemption from taxation as to their properties, except in the sole respect that petitioners caused to be stricken therefrom and declined to execute the above mentioned oath. Thereupon the county tax assessor denied and disallowed petitioners' claims of exemption as to their church properties and assessed said properties for taxes in the same manner as non-exempt properties. Petitioners paid said taxes under protest and brought this action to recover same and for declaratory judgment.

In Case No. 382 the trial court sustained respondents' demurrer without leave to amend and entered judgment dismissing the action. On appeal the Supreme Court of California (4-3) affirmed (311 Pac. 2d 508).

In Case No. 385 the trial court overruled the demurrer and granted judgment in favor of petitioner, ordering a refund. The Supreme Court of California (4-3) reversed

that judgment and dismissed the complaint (311 Pac. 2d 540).

In Case No. 385, by leave of this Court, the Valley Unitarian-Universalist Church, Inc., was substituted as petitioner in place of the People's Church of San Fernando Valley, Inc. (26 U. S. Law Week 3177); and the two cases were consolidated (26 U. S. Law Week 3128).

Brief Statement of the Position of the Union

The provisions of the California Constitution and statute requiring petitioners to subscribe to said declaration or oath, as a condition to exempting their church properties from taxation, constitute a violation of the First and Fourteenth Amendments of the United States' Constitution.

The First Amendment of the Federal Constitution as read into the Fourteenth Amendment, makes invalid any State law "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press". The States and all their agencies are as incompetent as Congress to enact laws or give sanction to acts which are in conflict with the prohibitions of the First Amendment.

The aforesaid provisions of the constitution and statutes of California, on th r face and as applied herein against petitioners, constitute a violation of the rights of freedom of religion and speech of petitioners, and of each of their individual members, and of the principle of separation of church and state.

The judgment below should be reversed.

It is not the purpose of this brief to cover all the points briefed by the parties, but rather to discuss several points not raised or emphasized by the parties.

POINT I

The oath requirement constitutes an unconstitutional prior restraint on the exercise of free speech and religion.

The tax exemption was not denied to petitioners because they have advocated, or are advocating, either the overthrow of the State or Federal governments by force or violence or other unlawful means or the support of a foreign government against the United States in the event of hostilities. There was no finding, and there was no charge or evidence, that petitioners had engaged or were engaging in such advocacy.

This is not a situation where the tax exemption was denied or revoked because petitioners had been duly found to be engaging in such advocacy (quite apart from the question of whether such advocacy can be constitutionally prohibited, in any event). Here, the denial of a tax exemption was based solely on petitioners' refusal to subscribe to a declaration or oath of non-advocacy imposed by the statute and embodied in a prescribed tax exemption claim form.

In this process the taxing authorities have arbitrarily *assumed* that petitioners are engaging in such advocacy simply because they refuse to subscribe to an oath that they are not doing so. Not even is there a showing of a threatened or imminent act of such advocacy on the part of petitioners.

This presents a clear instance of an unconstitutional prior restraint or censorship on the exercise of free speech and free religion.

There is some difference between the California Constitutional provision (§19, Art. XX) and the "implement-

ing" statutory provision (§32, Revenue and Taxation Code).

Under that Constitution, a tax exemption may not be received by a person or organization which *advocates* the proscribed conduct. The criteria for exemption is, or appears to be, actual advocacy.

Under the statute, however, the tax exemption cannot be received unless the claim for exemption contains a subscribed declaration that the person or organization making same "does not" advocate the proscribed conduct; and it is a felony to make a false declaration. The criteria for exemption is not actual advocacy, but the making of a declaration of non-advocacy.

But whether the tax exemption is denied because of such actual advocacy or because of a failure to subscribe to a declaration of non-advocacy, the result is an unconstitutional restraint on free expression.

Furthermore, the Constitutional and statutory provisions both embody two types of advocacy (1) the overthrow of the government by force or violence or other unlawful means and (2) the support of a foreign government against the United States in the event of hostilities.

No distinction is drawn in the California Constitution or statute between advocacy of abstract doctrine and advocacy directed at promoting unlawful action. The denial of tax exemption is not predicated upon advocacy of action at all. It is not predicated upon the advocacy of immediate action rather than action at some remote future time.

The denial of tax exemption is not related to the sort of advocacy which incites to, and has a tendency to produce, illegal and forcible action. It is not related to any clear and present danger or to the prevention of any grave and immediate danger to interests which the State may lawfully protect. As implemented by the statute and as

applied to petitioners, the advocacy proscribed by California as a condition of tax exemption, is divorced from any effort to incite action and any clear and present danger. There is no finding or claim that petitioners are communist or subversive organizations.

The kind of advocacy which these California laws, as applied, are designed to suppress is not the kind of advocacy which may be constitutionally prohibited to a church, or anyone else. See *Yates et al.* v. *United States*, 354 U. S. 298 (1957); *American Communications Assn.* v. *Douds*, 339 U. S. 382, 412 (1950); *Whitney* v. *California*, 274 U. S. 357, 373, 376-7 (1927).

Even if the kind of advocacy, here sought to be proscribed by the California laws as a condition for church tax exemption, could be regarded as criminal, or illegal or constitutionally prohibited under the First and Fourteenth Amendments, which is denied, it would be time enough for California to refuse tax exemption to churches such as petitioners if and when they are found to be actually engaged in such advocacy, and not before.

As Thomas Jefferson said in the "Virginia Statute for Religious Liberty":

> "* * * that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the propagation of principles on supposition of their ill tendency is a dangerous fallacy which at once destroys all religious liberty * * *; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

As long as petitioners are using their properties solely for religious purposes and are not found to be actually engaging in advocacy not protected by the First and Fourteenth Amendments against state action, they should

not, and cannot legally, be penalized by being refused a tax exemption otherwise available to all religious organizations in California.

In the present context, the following words from the separate opinion of Justices Black and Douglas in *Yates*, *supra*, 354 U. S. 298, 343-4, bear repeating:

> "Doubtlessly, dictators have to stamp out causes and beliefs which they deem subversive to their evil regimes. But governmental suppression of causes and beliefs seems to me to be the very antithesis of what our Constitution stands for. The choice expressed in the First Amendment in favor of free expression was made against a turbulent background by men such as Jefferson, Madison and Mason—men who believed that loyalty to the provisions of this Amendment was the best way to assure a long life for this new nation and its Government. Unless there is complete freedom for expression of all ideas, whether we like them or not, concerning the way government should be run and who shall run it, I doubt if any views in the long run can be secured against the censor. The First Amendment provides the only kind of security system that can preserve a free government—one that leaves the way wide open for people to favor, discuss, advocate, or incite causes and doctrines however obnoxious and antagonistic such views may be to the rest of us."

As was stated in *Board of Education* v. *Barnette*, 319 U. S. 624, 639, 641, 642 (1943):

> "But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect.
>
> • • •

> "Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.
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> "But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."

In that case the Court held that children could not be expelled from the public schools for failure, on religious grounds, to recite a pledge of allegiance.

Prior restraints by a State on expressions of speech and religion, effected, directly or indirectly, by means of loyalty oaths or use of taxing power, or otherwise, are unconstitutional under the 1st and 14th amendments. That applies to these California laws.

POINT II

The requirement of such a loyalty oath as a condition to a tax exemption, otherwise granted, is in effect a tax to accomplish a prior restraint on freedom of expression.

As is pointed out by the California Supreme Court (R. 38-9), church organizations, throughout the history of California, have been exempt from taxation, either by

statute or constitutional provision. The present California Constitution (Section 1½ of Article XIII) provides taxation exemption for all buildings and real property "when the same are used solely and exclusively for religious worship".

Provision has long been made for the exemption of church property from taxation, in every one of the 48 States in this country, either by constitution or statute. The exemption is granted on the premise that religious organizations are a benefit to society, that they promote the social and moral welfare and that, to some extent, they are bearing burdens that would otherwise be imposed upon the public to be met by general taxation. (Torpey, "Judicial Doctrines of Religious Rights in America", pp. 172-5 (1948).) As stated in 84 Corpus Juris Secundum p. 586 § 289, "The policy on which exemption is predicated is the encouragement of religion for the public welfare" *First Unitarian Soc. of Hartford* v. *Town of Hartford*, 66 Conn. 368 (1895).

Admittedly, petitioners' buildings and property are used solely and exclusively for religious worship.

There is no showing by respondents that petitioners' properties have not been, are not being, or will not be, used solely and exclusively for religious worship, and petitioners have not been refused exemption on that ground.

Petitioners have been refused tax-exemption solely because, in making claim for such exemption, they have declined to subscribe to said loyalty oath. The oath requirement bears no relation to the traditional, universal reasons for granting tax exemption to church properties.

California, thus, is now using its power of taxation, and particularly its tax exemption power, to coerce the

taking of said loyalty oath and thereby to effect a prior restraint on, and suppression of, the exercise of freedom of speech and of religion. California, thus, grants tax exemption to religious bodies that subscribe to the required loyalty oath, and denies tax exemption to religious bodies that fail or refuse to do so. It imposes taxes on non-oath taking churches and exempts from taxation oath taking churches. The test of taxation, or exemption from taxation, under the challenged California laws is no longer the religious use of property test, but a political loyalty test. That such oath, or oath taking generally, is contrary to religious principles or conscience is disregarded.

This Court has pointed out that taxes may not be used by a State to suppress or to prohibit freedom of speech or freedom of religion. (*Grosjean* v. *American Press Co.*, 297 U. S. 233 (1936); *Follett* v. *McCormick*, 321 U. S. 573, (1944).)

In *Grosjean* this Court stated (at pp. 245, 274):

> "For more than a century prior to the adoption of the amendment—and, indeed, for many years thereafter—history discloses a persistent effort on the part of the British government to prevent or abridge the free expression of any opinion which seemed to criticize or exhibit in an unfavorable light, however truly, the agencies and operations of the government. The struggle between the proponents of measures to that end and those who asserted the right of free expression was continuous and unceasing."
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> • • •
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> "The aim of the struggle was not to relieve taxpayers from a burden, but to establish and preserve the right of the English people to full information in respect of the doings or misdoings of their government."

So here, the real purpose of the challenged California laws is to prevent or abridge free expression of opinions which are critical of the agencies and operations of the State and Federal governments, particularly in respect of their possible misdoings. As pointed out in *Grosjean*, the use of its powers of taxation was one of the favorite methods of the British government to suppress governmental criticisms. The framers of the First Amendment were familiar with the English struggle and sought to preclude future odious methods of taxation designed to effect such prior restraints on freedom of expression.

In *Follett*, this Court said (at p. 577):

> "The exaction of a tax as a condition to the exercise of the great liberties guaranteed by the First Amendment is as obnoxious (*Grosjean* v. *American Press Co., supra; Murdock* v. *Pennsylvania, supra*) as the imposition of a censorship or a previous restraint. *Near* v. *Minnesota*, 283 U. S. 697. For, to repeat, 'the power to tax the exercise of a privilege is the power to control or suppress its enjoyment.' *Murdock* v. *Pennsylvania, supra*, p. 112."

This California tax-exemption law is a dangerous step in that direction of control and suppression.

That the denial of such tax exemption to churches is a serious penalty and can result in the closing of churches is made manifest from the "excusing legislation" by California, which recites that "Some churches have inadvertently failed to file the required affidavit in support of the tax exemption of their property, and as a result now are confronted with obligations which, if met, will substantially impair their ability to function effectively" (California Statutes 1955, c. 6, p. 441; California Statutes 1957, c. 4, (Sen. Bill 202; West's 1957 California Legisla-

tive Service, p. 5). A "substantial impairment of ability to function effectively" is but a short step away from a final closing of church doors.

POINT III

Requiring petitioners to subscribe to such an oath in order to receive a tax exemption of church property, otherwise available to them and other churches, violates the principle of separation of church and State and prohibits the free exercise of religion.

By subscribing and adhering to such an oath these petitioners would be forced to compromise their corporate religious principles and to forfeit what they consider to be their God-given right to advocate and expound principles of the Universal Moral Law and to express moral judgments in respect of acts of government.

In the event that the United States should engage in hostilities with a foreign government, petitioners would be precluded, by such an oath, from advocating the support of such a foreign government, under any circumstances, irrespective of how morally right that foreign government might be and how morally wrong the United States government might be.

Freedom to worship God according to the dictates of one's conscience and to teach and express the will of God as one is illumined to it, would be a mockery if religious societies could not voice moral judgment on unconscionable acts of government, in domestic or foreign affairs.

It should not so soon be forgotten that among the complaints in our "Declaration of Independence" against the King of Great Britain was his imposition of unjust taxes; his use of "large armies of foreign mercenaries

to complete the works of death, desolation and tyranny already begun, with circumstances of cruelty and perfidy unworthy the head of a civilized nation"; and his waging of "cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of distant people, who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither": (Text quoted is the original text of "The Declaration of Independence", as reported to Congress, 1776.)

If the United States were to engage in a warfare of cruelty and perfidy unworthy of a civilized nation, or were to wage cruel war against a segment of humanity violating the most sacred rights of life and liberty of innocent, inoffensive peoples, would not petitioners and other religious societies in this country be justified, in the name of the universal God, in denouncing such acts and in advocating support for the victims thereof, as did the founders of this country? God and the Moral Law are not nationalistic, but universal, according to petitioners.

What if the United States, as a member of the United Nations and one of the original signatories of its Charter, were to violate that Charter by engaging in acts of agression against a helpless nation, and what if the other members condemned the United States and invoked sanctions against it? Would not petitioners be justified in criticizing the government responsible therefor and urging support for the helpless victims of such aggression?

The general religious principles of these petitioners are in harmony with the sentiments expressed by Thomas Paine: "My Country is the World. My Religion is to do good"; and those expressed by William Lloyd Garrison: "Our Country is the World—Our countrymen are all mankind."

That, too, is the lofty concept behind the United Nations.

The California law would restrict churches of God and of Christ to an advocacy of the older, nationalistic concept aptly expressed by Stephen Decatur: "In our intercourse with foreign nations, may she always be in the right; but our country, right or wrong."

The hope is ever present that our country will always be in the right. But petitioners believe that if our country should be in the wrong, they should have the freedom to say so in the name of God, the universal Moral Law and humanity, and to advocate means of correcting the wrong and support of the wronged and oppressed.

Among the religious principles espoused by petitioners is "Universal brotherhood, undivided by nation, race or creed" and "Allegiance to the cause of a united world community" (R. 24). However noble or God-inspired, the advocacy and practice by petitioners of "a universal religion of reason, brotherhood and good will", of a "common reverence for life, wherever it may be found" and of "allegiance to the cause of a united world community undivided by nation, race or creed", (R. p. 25) might easily result in, the condemnation of a tyrannical, cruel and inhuman government and the urging of the support of the foreign victims of that government's acts.

The question arises whether the Christian churches of this country, in order to obtain tax exemption, must forego advocacy of the support of Christians and other children of the universal God in other lands, if the latter were to be the victims of inhuman treatment, in hostilities, by the United States. This possibility may seem to be far fetched in view (at least, our own view) of the benign and humane attitude of our country, historically, in its relations with foreign peoples, but the situation could quickly change in this age of atomic weapons and

with frequent changes in governmental officials. The question arises, also, as to whether Christian churches are to be foreclosed from believing, practicing and advocating the teachings of the Sermon on the Mount, such as love your enemies and bless the peacemakers who shall be called the Children of God.

It is barely conceivable that Jefferson's oft-quoted remark: "Rebellion to Tyrants is Obedience to God" which epitomized the justification for the Colonies throwing off the government of Great Britain, may again have application in this country; and the voices of the universal God, as raised in the churches, should not be stilled by the imposition of prior restraints on speech and religion.

The oath involved here is not designed for tax revenue purposes or to aid religious societies in their general welfare work, but rather to coerce a uniformity of political sentiment favorable to any and all acts of government, whether such acts are morally right or morally wrong. It is an oath of allegiance, unlimited as to time or circumstances. In *Girouard* v. *United States* (1945), 328 U. S. 61, which involved an oath of allegiance required of a prospective citizen, this Court stated (pp. 68-9):

> "The struggle for religious liberty has through the centuries been an effort to accommodate the demands of the State to the conscience of the individual. The victory for freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the State. Throughout the ages, men have suffered death rather than subordinate their allegiance to God to the authority of the State. Freedom of religion guaranteed by the First Amendment is the product of that struggle. As we recently stated in *United States* v. *Ballard*, 322 U. S. 78, 86,

> 'Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *Board of Education* v. *Barnette*, 319 U. S. 624.' The test oath is abhorrent to our tradition."

In the *Girouard* case this Court quoted with approval from the dissenting opinion of Chief Justice Hughes and Justices Holmes, Brandeis and Stone in *United States* v. *Macintosh* (1939), 283 U. S. 605 and the teachings of this latter opinion now have application here. The *Macintosh* case concerned an oath of allegiance upon the taking of which was conditioned the privilege of naturalization. In certain aspects that oath is very similar to the one involved here. While Macintosh expressed a willingness to take the oath, he explained that he was not willing "to promise beforehand" to take up arms, "without knowing the cause for which my country may go to war" and that "he would have to believe that the war was morally justified". He declared that "his first allegiance was to the will of God"; and that "he could not put allegiance to the Government of any country before allegiance to the will of God" (ed., p. 629). The dissenting opinion stated (pp. 633, 634, 635):

> "Much has been said of the paramount duty to the State, a duty to be recognized, it is urged, even though it conflicts with convictions of duty to God. Undoubtedly that duty to the State exists within the domain of power, for government may enforce obedience to laws regardless of scruples. When one's belief collides with the power of the State, the latter is supreme within its sphere and submission or punishment follows. But, in the forum of conscience, duty to a moral power higher than the State has always been maintained. • • • The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation. • • • One cannot speak of

religious liberty, with proper appreciation of its essential and historic significance, without assuming the existence of a belief in supreme allegiance to the will of God. * * * *The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field.* * * * There is abundant room for enforcing the requisite authority of law as it is enacted and requires obedience, and for maintaining the conception of the supremacy of law as essential to orderly government, without demanding that either citizens or applicants for citizenship shall assume by oath an obligation to regard allegiance to God as subordinate to allegiance to civil power. *The attempt to exact such a promise, and thus to bind one's conscience by the taking of oaths or the submission to tests, has been the cause of many deplorable conflicts.* * * *

"Nor is there ground, in my opinion, for the exclusion of Professor Macintosh because his conscientious scruples have particular reference to wars believed to be unjust. There is nothing new in such an attitude. *Among the most eminent statesmen here and abroad have been those who condemned the action of their country in entering into wars they thought to be unjustified. Agreements for the renunciation of war presuppose a preponderant public sentiment against wars of aggression.*" (Italics supplied.)

There is no need to recite here the terrible history of mankind associated with the use of oaths and ceremonies to coerce allegiance to the State. One example should suffice. In "The Story of Civilization: Caesar and Christ" (1944), Will Durant (at pp. 646-52) describes the war of church and state (A. D. 64-311) between the Roman government and the Christians. The Christians were horribly persecuted for refusal to burn incense before a statue of the emperor, which ceremony "had become a

sign and affirmation of loyalty to the Empire, like the oath of allegiance required for citizenship today"; for refusal to join in the universal *supplicatio* to the state gods of Rome, an act designed to "strengthen national enthusiasm and unity"; and to conform to other like Roman ceremonies of allegiance. The Christians, on their part, passed moral judgment on the Roman government, "ridiculed its gods, rejoiced in its calamities and predicted its early fall". Many Christians refused military service. Says Durant (at p. 64) "On its side the Church resented the idea that religion was subordinate to the State. • • •. The Roman government concluded that Christianity was a radical—perhaps a communist—movement subtly designed to overthrow the established order." *Cf. West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 641 (1943). Would California, this country or the world be better off, if the Christians had been effectively suppressed, by a Roman state become morally decadent?

The First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. The principle of separation of Church and State includes the proposition that the government should not interfere with the beliefs of any religious individual or groups, or with any acts giving expression to those beliefs unless and until it appears that such acts have actually occurred and have exceeded permissible constitutional limits. (*Cf. Everson* v. *Board of Education*, 330 U. S. 1 (1947); *McCollum* v. *Board of Education*, 333 U. S. 203 (1948); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940).

When the State, directly or indirectly, intrudes itself into the field of religion, particularly to restrain in advance the propagation of principles on mere supposition of their unlawful tendency, it breaches the wall of separation and destroys religious freedom. We believe

that is what California has done here. If and when any religious society oversteps the legitimate bounds of its free exercise of religion then, and only then, should the State take steps to penalize it. The penalty should be for the abuse of the rights—the rights should not be curtailed in advance. (*DeJonge* v. *Oregon*, 299 U. S. 353, 364-5 (1937).)

Governments like ours that derive "their just powers from the consent of the governed" should not attempt to throttle criticism by the governed by the device of such oaths—especially that segment of governed who are motivated by a universal Moral Law and an allegiance to God. Cf. Justice Jackson, in *American Communications Assn.* v. *Douds*, 339 U. S. 382, at 442-3 (1950).

Any resort to such methods, by direction or indirection, seems to us to be out of harmony with the principles upon which this country was founded, epitomized in the First Amendment.

POINT IV

California law violates the religious freedom of each individual member of petitioner churches. Because of the nature of these churches, such an oath or declaration could not be executed by petitioners on behalf of the individual members thereof.

Petitioners are Unitarian-Universalist churches. They are congregational type churches because they adhere to the congregational form of church polity, the essential peculiarity of which is the maintenance of the independence of each congregation or society in all matters of ecclesiastical government, discipline, doctrine and practice, including the right of the members of that society to change its religion. Universalists and Unitarians, as well as Quakers, are congregationalists in this sense. 76 Corpus Juris Secundum, p. 740; *Hale* v. *Everett*, 53 N. H.

9, 137-38 (1868); *Attorney General* v. *Dublin*, 38 H. H. 459, 541-4 (1859); cf. *Watson* v. *Jones*, 80 U. S. 679, 724-5 (1871); "Religion in America", *Sperry* (1946) pp. 283-5*; *Rosten*, "A Guide to the Religions of America" (1955) p. 147.

One of the working principles of Unitarian-Universalist churches is "Individual freedom of belief" on the part of each member (R. pp. 14, 24). These churches have no dogma or creeds as a condition of membership or which every member of the church must accept. Instead, each member works out for himself his own creed or statement of beliefs and relies upon his conscience to guide him. No minister, officer or member of such a church can tell any other member what is right or how he should behave. In short, there is no authority, ecclesiastical or otherwise, within or without such churches, that can state, direct or control the individual beliefs of the members thereof. The "priesthood of the believer" is a reality in these churches. As Rosten, *supra*, says:

> "'Unitarians are decidedly individualistic in their religion; they prefer to let every Unitarian speak for himself about his faith' Unitarians are firm believers in 'the Church Universal. • • • Membership in the Church Universal depends not upon the profession of a formal creed, but simply upon the honest desire in a person's heart to do justly, to love kindness, and to walk with thy God.' • • • Unitarians • • • worship 'differently' because they believe that every individual has the right to approach his God in his own way, and that every religious community has a duty of creating such patterns of worship as best serve the needs of those who worship."

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* According to Sperry, 35 per cent of total church membership in this country, as of 1943, were in churches organized on a congregational polity basis.

See, also, "What Americans Believe and How They Worship" by *Williams* (Harpers, 1952), pp. 223-28, where it is stated: "Unitarians want no part of a restrictive creed; they insist on freedom of belief."

Petitioners, in order to apply for the tax exemption which they have for many years enjoyed as religious organizations, were called upon to execute a claim-form, required and furnished by the county tax assessor, embodying the oath or declaration in question.

Under Section 32 of the California Revenue and Taxation Code (Calif. Stats. 1953, c. 1503, p. 3114; §1), the claim for exemption must contain "a declaration that the person or organization making the statement, return or other document does not advocate the overthrow of the Government of the United States of the State of California by force or violence or other unlawful means or advocate the support of a foreign government against the United States in the event of hostilities." Thereunder, failure of such person or organization to make such a declaration precludes exemption from the tax; and any person or organization who makes such declaration falsely is guilty of a felony.

Under the prescribed claim-form petitioners were, necessarily, the "applicants". Since petitioners are religious corporations, such forms were required to be executed by a corporate officer. However, such an oath or declaration as is contained in such form is not, and cannot be made, binding on the individual members of petitioner churches, because of the very nature of those churches and the religious principles of their members, mentioned above. Petitioners are not unitary, national or authoritarian churches, their polity not being presbyterial or episcopal. No officer, minister or member of these churches has any authority to take, or subscribe to, an oath or declaration intended to be binding on the other members. It is extremely doubtful that the statutory

crime for falsely executing such an oath or declaration could be imputed to any individual member of petitioner churches who did not personally subscribe to or execute same.

Actually, therefore, petitioners could not effectively subscribe to such a declaration, quite apart from other reasons for not doing so.

Since no such oath or declaration can be made on behalf of, or binding upon, petitioners' individual members, it could be disregarded by any such member in good conscience, as not in accordance with his individual freedom of belief. The questions arise as to how any religious organization, such as petitioners, can duly execute or conform to such an oath, and how it could be made enforceable. In taking such an oath any minister, officer or member could act only on behalf of himself and not on behalf of the other members. Furthermore, any minister, officer or member can speak or advocate, in or out of church meeting, only for himself; and what he says or does is not binding on the other members of these churches or on the religious bodies as a whole.

No such problem could arise in connection with the making of the usual claim for exemption of church property from taxation, because the usual claim-form does not embody such an oath or declaration and because, in that situation, the only statement necessary to be signed is one that the churches are using their properties solely for religious purposes, which statement could not impinge upon or conflict with any religious principle or practice of petitioners or their members.

Thus, in its practical operation, these California laws discriminate against churches like petitioners and favor the unitary, authoritarian type of churches. These laws, therefore, prefer one religion over another in violation of the "establishment of religion" clause of the 1st Amendment. *Everson* and *McCollum* cases, *supra*; *Zorach* v. *Clauson*, 343 U. S. 306, 313 (1952).

Conclusion

This case is one of first impression in this Court. It involves a new form of an oath of allegiance and a novel method of forcing obedience to it. The effect, if not the design, of these California laws is to throttle in advance freedom of speech and religion and to breach the wall of separation of church and state. Whatever high motives of nationalism or patriotism may have prompted these laws, they are inconsistent with the liberties and principles inherent in the First Amendment upon which this country came into being and was founded.

We respectfully submit that the decisions of the California Supreme Court should be reversed, with a declaration that the provisions of the California constitution and statute, inherently and as applied against these petitioners, are unconstitutional under the First and Fourteenth Amendments.

Respectfully submitted.

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